

## COLORADO DEPARTMENT OF HEALTH CARE POLICY & FINANCING

1570 Grant Street, Denver, CO 80203-1818 ◆ (303) 866-2993 ◆ (303) 866-4411 Fax John W. Hlckenlooper, Governor ◆ Susan E. Birch MBA, BSN, RN, Executive Director

September 1, 2011

Dianne Heffron, Director
Financial Management Group
Center for Medicaid, CHIP and Survey & Certification
Centers for Medicare & Medicaid Services
Department of Health and Human Services,
Attention: CMS-2292-P
Mail Stop C4-26-05
7500 Security Boulevard
Baltimore, MD 21244-1850

RE: CMS-2292-P Medicaid and Children's Health Insurance Programs; Disallowance of Claims for FFP and Technical Corrections.

Dear Ms. Heffron:

I am writing to you on behalf of Colorado's single state Medicaid agency, the Department of Health Care Policy and Financing to provide comment related to CMS-2292 P Medicaid and Children's Health Insurance Programs; Disallowance of Claims for FFP and Technical Corrections proposed regulations under principles of the President's Executive Order 13563 released January 18, 2011, entitled, "Improving Regulation and Regulatory Review."

Colorado wishes to thank CMS for adding an administrative reconsideration process for States to pursue in disputing deferrals or disallowances, and for the increased time available to States to notify CMS of that intent. While Colorado has not needed to avail itself of the existing installment repayment process, we appreciate the proposed lowering of the threshold levels to qualify a repayment for an installment approach. Colorado notes some inconsistency in the proposed regulations on the change from "Regional Administrator" to "Consortium Administrator," and suggests this may be an oversight.

On page 46690 of the *Federal Register* notice published August 3, 2011, CMS requested comment on using the Philadelphia Reserve State coincident index as the criteria for State economic health, to be used in determining State qualification as experiencing economic distress.

1. Colorado believes that using the Philadelphia Reserve State coincident index is a reasonable approach due to its status as a publically available and routinely updated index. However Colorado contends that setting the threshold at a negative percent change on each of six (6) previous months sets a standard that is too stringent and does not correlate well with State budget experience. Specifically, because States use annual and biannual budget processes, the amount of funding a State can free up in the short term for a disallowance may not be related to the most recent six months of economic activity; rather, it is likely to be a function of longer term State economic conditions.

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2. Additionally, the six (6) month standard unfairly penalizes States that experience a single month of growth during a period of overall economic decline. There are a number of examples of this in the last 36 months: Arizona in March and May 2010; Kansas in January, April, June, October, and December 2010; Louisiana in July 2009; Maine in November 2009; Montana in March 2010; New Mexico in March and May 2010; and, Vermont in August and October 2009. The Montana example is perhaps the most striking; in the 37 month period between January 2008 and January 2011, Montana had a single month of economic growth (as measured by the index), in March 2010. This single month of growth would have created a window where the state would have been ineligible for the relief proposed under this provision. This potential outcome seems contrary to the intent of the provision.

3. Therefore, Colorado strongly recommends using a comparison of average annual totals based upon the monthly Philadelphia Reserve State coincident index, which would better reflect a State's economic distress condition.

In addition, Colorado has specific comments on the proposed regulations as follows:

§430.42(c)(7) Procedures for reconsideration of a disallowance. Colorado strongly disagrees with creating a regulatory framework where lack of timely action by the Administrator to issue a decision on a request for reconsideration affirms the disallowance. Colorado perceives that retaining this provision fatally undermines any advantages derived from creating an administrative reconsideration process. Colorado strongly recommends that the provision be revised to reflect lack of timely action by CMS results in a decision in the State's favor.

§430.48(c)(5)(i) Standard repayment amounts, schedules, and procedures. Please clarify use of the term "deposits" in this subparagraph; may a State continue to accomplish repayment through <u>adjustments</u> in the State's Payment Management System (PMS) account? Colorado suggests that CMS' intent may be better reflected by adding "or adjustments" to the provision.

§433.38 Interest charge on disallowed claims for FFP. Colorado notes there is an inherent inequity in charging interest on disputed funds when a State retains the FFP and loses on reconsideration/appeal but not when a State repays the FFP and then prevails on reconsideration/appeal. Colorado strongly recommends that CMS take the opportunity to address this inequity.

Thank you for the opportunity to provide comment on concerns and suggested changes to the proposed rules on disallowance of claims for FFP for the Medicaid and Children's Health Insurance Programs. Should you have any questions, I can be reached at Barbara.prehmus@state.co.us or via telephone at (303) 866-2991.

Sincerely,

Barbara B. Prehmus, M.P.H.

Federal Policy & Rules Officer

Cc: Ms. Susan E. Birch, MBA, BSN, RN, Executive Director

Ms. Lorez Meinhold, Deputy Policy Director, Governor's Office of Policy and Initiatives,

Colorado Governor John W. Hickenlooper

Ms. Cynthia Mann, Center for Medicaid, CHIP, Survey & Certification